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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,849	10/18/2001	Harold Fisher	3589.65672	1292

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EXAMINER
MATHEW, FENN C

ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 03/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/869,849	FISHER, HAROLD	
	Examiner	Art Unit	
	Fenn Mathew	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 October 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3-6 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 3 and 4 recite the limitation "said one end". There is insufficient antecedent basis for this limitation in the claim. Furthermore, it is unclear as to what the applicant is claiming. The limitation, "said one end" renders the claim indefinite. Claims will be evaluated as best understood.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1-2, 4, 8-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Furr et al. (U.S. Patent No. 5,188,356). Furr et al. discloses a device with a thumb stabilizing component (31) for securing the thumb of the user to the adjacent

index finger permitting the thumb to move toward the index finger but limiting movement of the thumb away from the index finger to a predetermined angle; and a positioning component (26) for securing the thumb stabilizing component in proper position on the hand of the user.

Referring to claim 2, Furr et al. discloses a thumb receiving section (10), an index finger receiving section (27), and a non-extendable flexible connector extending between and secured to the thumb section and index finger section. (See fig. 5)

Referring to claim 3, Furr et al. discloses a device having a positioning component comprising an elongated strap (20) having a first end secured to the thumb stabilizing component and a second end releasably securable to the strap.

Referring to claim 4, Furr et al. discloses a device having a positioning component comprising an elongated strap (20) having a first end secured to the thumb stabilizing component and a second end releasably securable either to the strap (see fig. 5) or to the stabilizing component (37).

Referring to claim 8, Furr et al. discloses a thumb splint comprising a thumb receiving section (10), an index finger receiving section (27), a non-extendable, flexible connector between and secured to the thumb receiving section and the index finger receiving section (see fig. 5) and an elongated strap secured to the index finger receiving section.

Referring to claim 9, Furr et al. disclose a splint made from one continuous thin and lightweight ribbon of material (see fig. 4).

Referring to claim 11, Furr et al. disclose a splint where the thumb receiving section has a surface for engaging a substantial portion of the distal side, relative to the index finger, of the proximal phalange of the thumb. (See fig. 5)

Referring to claim 12, Furr et al. disclose a splint where the index finger receiving section fits around the base of the proximal phalange of the index finger. (See fig. 5)

Referring to claim 14, Furr et al. disclose a splint where the securing strap attached to the index finger receiving section at the point where the index finger receiving section connects with the connector to hold the receiving sections down on the fingers, wrapped across the hand and the wrist to secure the splint.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claim 5-6, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furr et al. Referring to claim 5, Furr et al. discloses a thumb splint having an elongated strap having a sufficient length to extend from the stabilizing component, along the backside of the hand and around the wrist. (See fig. 5 and 6) Furr et al. do not teach having the strap extend along the palm of the hand of a user. It would have been obvious to one with ordinary skill in the art at the time of invention to extend along

the length of the palm of the user in order to provide further support for the thumb-stabilizing component in order to further restrain the thumb.

Referring to claim 6, Furr et al., as modified above in claim 5, disclose a thumb splint with the thumb stabilizing component and positioning component being integral and formed of a single length of fabric (column 6, line 36).

Referring to claim 10, Furr et al. do not teach use of polyester or nylon material to form the splint. It would have been obvious to one having ordinary skill in the art at the time of invention to have the splint formed from polyester or nylon material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin,* 125 USPQ 416.

Referring to claim 13, Furr et al. discloses a thumb splint comprising a thumb receiving section (10), an index finger receiving section (27), a non-extendable, flexible connector between and secured to the thumb receiving section and the index finger receiving section (see fig. 5) and an elongated strap secured to the index finger receiving section, with the connector being of a length so that the thumb can move and extend back freely, but not hyper-extend or abduct the thumb away from the base of the index finger. Furr et al. do not teach that the thumb cannot hyper-extend away from the base of the index finger beyond 100 degrees. It would have been obvious to one with ordinary skill in the art at the time of invention to have the connector have a length sufficient length to prevent hyperextension of the thumb of a user beyond 100 degrees in order to prevent injury to a user.

Referring to claim 15, Furr et al. disclose a thumb splint comprising one continuous thin and lightweight ribbon of material (see fig. 4) formed to define a thumb receiving section (10), the thumb receiving section having a surface for engaging a substantial portion of the distal side, relative to the index finger, of the proximal phalange of the thumb (see fig. 5), an index finger receiving section (27) with the index finger receiving section fits around the base of the proximal phalange of the index finger (see fig. 5), a non-extendable, flexible connector extending between and secured to the thumb receiving section and the index finger receiving section, with the connector being of a length so that the thumb can move and extend back freely, but not hyperextend, and an elongated strap (see fig. 5) secured to the index finger receiving section for keeping the thumb and index finger receiving sections operatively positioned on the index finger and thumb, with the securing strap being attached to the index finger receiving section at the point where the index finger receiving section connects with the connector to hold the receiving sections down on the fingers, wrapped across the hand and the wrist to secure the splint.

Furr et al. do not teach use of polyester or nylon material to form the splint. It would have been obvious to one having ordinary skill in the art at the time of invention to have the splint formed from polyester or nylon material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin,* 125 USPQ 416.

Furr et al. also do not teach that the connector is of a length so that the thumb of a user cannot hyper-extend away from the base of the index finger beyond 100 degrees. It would have been obvious to one with ordinary skill in the art at the time of invention to have the connector have a length sufficient length to prevent hyperextension of the thumb of a user beyond 100 degrees in order to prevent injury to a user.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furr et al. (U.S. Patent No. 5,188,356) in view of Cronin (U.S. Patent No. 4,706,658). Furr et al. discloses the claimed invention except for incorporation of the splint into a glove or mitt. Cronin teaches a splint (30) incorporated into a glove (10). It would have been obvious to one having ordinary skill in the art at the time of invention to incorporate the splint disclosed by Furr et al. into the glove in order to further protect the splinted thumb.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cronin	U.S. Patent No. 4,706,658
Sackett	U.S. Patent No. 5,787,896
Collins	U.S. Patent No. 3,533,405
Slider	U.S. Patent No. 3,707,730

Theisler U.S. Patent No. 4,953,568Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

fcm
March 19, 2002

JUSTINE R. YU
PRIMARY EXAMINER